Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Transfer Application No. 09 of 2004

Smt. Reetu Upreti,
W/o Shri Charu Chandra Upreti,
D/o Shri C.C. Pant,
R/o 1, Divya Jyoti Enclave,
Opposite LIG 65,
Phase-II, Indrapuram,
G.M.S. Road,
Dehradun.

…. Applicant

Versus

Charu Chandra Upreti,
S/o Late Shri Ram Dutt Upreti,
R/o Kusumkhera Haldwani,
Tehsil Haldwani,
District, Nainital, … Respondent

Sri V.K. Kohli Sr. Advocate assisted by I.P. Kohli learned counsel for the applicant
Sri K.N. Joshi, Advocate, learned counsel for the respondent

Hon'ble Prafulla C. Pant, J.

This application has been moved u/s 24 of Code of Civil Procedure, 1908, with the request that the original suit No. 72 of 2003 pending before Family Court, Nainital be transferred to Family Court, Dehradun.

Brief facts of the case are that the applicant got married to the respondent on 18.02.2001. The respondent filed a suit No. 72 of 2003 under Hindu Marriage Act, 1955, before Family Court at Nainital, seeking divorce from the applicant. The applicant is living in Dehradun while the respondent though belongs to Haldwani, Distt. Nainital, but serving in Mumbai. It is alleged that the applicant is doing graduation of Law from

Dehradun and not employed anywhere. The applicant is being paid Rs. 1,500/- p.m. as maintenance by the respondent apart from litigation expenses to the tune of Rs. 5,000/- already paid by him. This application has been moved by the applicant (wife) for transfer of case from the Court of Judge, Family Court, Nainital to Judge, Family Court, Dehradun on the ground that it is difficult for her to travel from Dehradun to Nainital on every date.

The respondent (husband) has filed counter affidavit stating that the applicant's father is a member of Trade Tax Tribunal at Kathgodam (Distt. Nainital), as such she has no difficulty in attending the Court at Nainital where her father is already residing.

In the rejoinder affidavit, the applicant has stated that her father comes to Kathagodam only when the Trade Tax Tribunal holds camps there, as such, it is incorrect to say if it is convenient for her to stay with her father at Kathgodam.

I heard learned counsel for the parties and perused the record.

In the present proceedings, this Court has to see if there is justification to accept the request of the applicant (wife) regarding transfer of suit No. 72 of 2003 from Judge, Family Court, Nainital to Judge, Family Court, Dehradun for its trial.

Distance between Dehradun and Nainital is more than 300 kilometers. It is submitted on behalf of the applicant that is takes 12 hours road journey (by bus) for the applicant in traveling from

Dehradun to Nainital. I agree with the submission as the applicant is not in service and on every date if she is required to travel such a distance, it would certainly be much inconvenient to her which can be saved if the suit is transferred to the Family Court at Dehradun. Learned counsel for the respondent states that respondent is ready to pay the traveling expenses to the applicant. However, in view of the principle of law laid down in Archana Singh Vs. Alok Pratap Singh II (2000) D.M.C. (Divorce in Matrimonial Cases) page 754 (SC), payment of traveling expenses is not the solution of such problems. And it is just and proper to transfer the case between the party from the Family Court, Nainital to Family Court, Dehradun.

In view of the above discussion and considering the fact even the husband is also not posted in Nainital, in the interest of justice, it appears necessary to transfer the suit No. 72 of 2003 from Family Court, Nainital to Family Court, Dehradun. Accordingly the application u/s 24 of the Code of Civil Procedure, 1908 is allowed. The Judge, Family Court, Nainital shall send the record and the suit to Judge, Family Court, Dehradun within a period of three-weeks from today. The parties, in person or through their counsel shall appear before the Judge, Family Court, Dehradun on 7th January, 2005 to participate in further proceedings of the suit. No order as to costs of this petition.

(Prafulla C. Pant, J.)

December 08, 2004
Shiv